



BLUE RIBBON COMMISSION ON TRANSITIONS TO COMMUNITY LIVING ADULT CARE HOME TRANSITION SUBCOMMITTEE

**September 12, 2012
Room 544, Legislative Office Building**

The Adult Care Home Transition Subcommittee met on Wednesday, September 12, 2012 at 10:00 A.M. in Room 544 of the Legislative Office Building. Members present were: Senator Stan Bingham and Representative Nelson Dollar, Co-Chairs; Senator Peter Brunstetter, Senator Louis Pate, Representative Mark Hollo, and Representative William Brisson. Public Members present were: Mr. Mark Long, Ms. Leigh Ann Kingsbury, Ms. Pam Shipman, Mr. Hugh Campbell, Mr. Sam Hooker, Dr. Peggy Terhune Mr. Connie Cochran, Mr. Mike Watson, Mr. Jim Jarrard, and Mr. Dennis Streets.

Theresa Matula, Amy Jo Johnson, Dr. Patsy Pierce, Sara Kamprath, Donnie Charleston, Joyce Jones, Candace Slate and Maria Kinnaird provided staff support to the meeting. Dr. Pat Porter serves as consultant to the Subcommittee.

Chairman Dollar called the meeting to order, welcomed members and guests and recognized the Sergeant-At-Arms. He also recognized Senator Stan Bingham, Co-Chair of the Subcommittee. After introductions from members and staff, Chairman Dollar gave an overview of the purpose of the subcommittee and informed the members that later they would hear from a panel of subcommittee members representing the industry in a variety of adult care homes and group homes in different residential arrangements.

Theresa Matula, General Assembly Research Division described the functions of the Research staff to the members. She stated that North Carolina has the task of possibly relocating a number of residents based on three issues: Personal Care Service eligibility changes (hereafter PCS), identification of Institutes of Mental Disease (hereafter IMD), and relocations in response to the federal Department of Justice (DOJ) agreement. She provided handouts which described in further detail the types of adult care homes, their locations and the types of residents they serve.

Mr. Streets asked a question for clarification purposes referring to the handout on supervised living, specific to 5600A group homes. Is there any licensure population size maximum? Ms. Matula did not know but said that she would get him a response.

The panel members then gave their presentations along with handouts they provided. Members on the panel were: Connie Cochran, CEO- Easter Seals United Cerebral Palsy; Hugh Campbell, NC

Association of Long Term Care Facilities; Sam Hooker, NC Assisted Living Association; and Dr. Peggy Terhune, CEO-Monarch. As a part of their presentations each was to describe populations and facilities being served; funding sources; impact of the combined issues relating to PCS, IMD determination and the recent DOJ agreement. Also, they should describe any possible solutions for people who reside in their facilities. The panelists gave testimonies to the impact the issues would have on their respective areas. Upon conclusion, the Subcommittee members exchanged questions and offered their concerns.

Several members asked if we had any leeway or flexibility regarding the IMD determinations, and our present status in that process? Mike Watson with DHHS replied that the department is following federal law and case law in defining an IMD and that the Department is moving forward with that process. The basic criteria used in determining if a facility is an IMD is that they have more than 16 beds (this includes consideration of group homes who may fall under the criteria of "shared ownership") and 50% or more of the population residing in the facility is there for the purposes of a mental health diagnosis. He stated that the initial assessment with Centers for Medicaid Services (hereafter CMS), was to look at licensed beds; however, CMS then decided to look at occupied beds. That criteria is being used in the initial screening process that has been agreed upon with CMS. Mr. Watson further stated that the corrective action plan with CMS would not provide for additional leeway on the IMD issue.

At the request of Sen. Brunstetter, Emory Milliken, General Counsel DHHS, was asked to provide comments from a legal perspective on the IMD issue as well as the DOJ settlement issue. Ms. Milliken was recognized and she stated that the DOJ investigation of our mental health system found that North Carolina, in their opinion, had an institutional bias towards keeping people in institutional settings rather than in communities. We would need to be sensitive to this issue as we move forward in complying with the components of the agreement. She agreed with Mr. Watson that the IMD issue is something that North Carolina does not have a choice in. She believes that the process DMA is following is consistent with the law and if we did anything differently this could impact the DOJ agreement.

Chairman Dollar asked about the PCS service side with regard to the application of the ADL definitions. He further asked for clarification on the assessments in qualifying under the new ADL definition for residents in adult care homes. Mr. Watson stated that they are going through an independent assessment process with CCMA, the independent contractor. The contractor is performing the assessments in a consistent way. Ms. Terrell further commented that the service hours, once an individual meets eligibility criteria, is a policy decision for the state Medicaid plan service.

There were further questions raised about the PCS services and the qualifying under the new ADL definition for residents in the adult care homes. Mr. Watson recommended the possibility of addressing some of the issues at another meeting at which time he could give a presentation and go through the independent assessment process. Chairman Dollar stated that this topic could be on a later agenda for committee discussion.

Ms. Sandy Terrell, Assistant Director Clinical Policy & Programs, Division of Medical Assistance was recognized to provide an update on shared ownership, the IMD process, and the status of the group homes. Ms. Terrell provided a handout with talking points. She highlighted several regulatory items depicting the definition of what constitutes an IMD as described in the Code of Federal Regulations (CFR).

She stated that the Department will continue the dialogue with CMS to better define shared ownership.

She described the screening process and analysis of data in making a final determination whether a facility is determined to be an IMD. This process involves looking at the occupied beds as well as the overall characteristics of the facility. She stated that the Department is trying to operationalize what is provided in the Federal Register, the State Medicaid plan, and regulations to actually determine the IMD's.

The members expressed significant concerns and had a variety of questions regarding shared ownership, the impact on group homes and HUD homes, licensure issues, and tenancy of property.

Chairman Dollar requested additional details on shared ownership, either from General Assembly staff or DMA staff, and information on what other states are doing.

Dr. Pat Porter asked about the timeline and completion of the phases with regards to the IMD determinations.

Ms. Terrell responded that the corrective action plan had a date of August 31 for the completion of phase 2. However, due to the methodology change directed by CMS to review the occupied beds versus the licensed beds, a new date for completion is still under negotiation with CMS.

Ms. Terrell gave an update on the facilities potentially at risk in Phase 2: 84 adult care homes, 52 family care homes, 47 group homes (6 beds or less).

There being no further business, the meeting was adjourned with an announcement of the next meeting being October 10th.

Representative Nelson Dollar, Co-Chair

Senator Stan Bingham, Co-Chair

Candace Slate, Committee Clerk